IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2921 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALAT JIGNESHKUMAR ASHWINBHAI & 65 - Petitioners

Versus

GUJARAT UNIVERSITY & 2 - Respondents

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Appearance :

MR BB NAIK for Petitioner(s) : 1 - 66.
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MRS VD NANAVATI for Respondent(s) : 1,
MR MEHUL H RATHOD for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/08/2005

C.A.V JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioners have prayed for appropriate writ, order and/or directions quashing and setting aside Circular No.23 dtd.14th February, 2005 issued by the Gujarat University. The petitioners have also prayed for appropriate writ, order and/or directions directing the respondent Nos.1 and 2 i.e. Gujarat University, to accept the Examination Forms for the examination of 3rd year Bachelor of Arts (hereinafter referred to as “B.A.) / Bachelor of Commerce (hereinafter referred to B.Com.) and direct the University to permit them to appear at the examination of 3rd Year B.A./B.Com., held and conducted by Gujarat University in the Month of March/April, 2005.

2.Initially the present Special Civil Application came to be filed by in all 66 students who wanted to appear in T.Y. B.A. / T.Y.B.Com. Examination. However, subsequently, petitioner No.2 and the petitioners Nos.56 and 66 withdrew the petition and the petition continued for adjudication with respect of the petitioner Nos.1 and 3 to 55 only.

3. It is the case of the petitioners that they are students of 3rd year B.A., and studying in respondent No.3 College. They had not cleared the examination of 2nd year of B.A., as they had failed in one or two subjects and they were permitted to allow to keep term (A.T.K.T.) in the 3rd year of B.A. They appeared in the subject of 2nd year of B.A., in which they had failed earlier in the examination held and conducted by the respondent University in the month of November, 2004 and in the beginning of December, 2004. The result of the said

examination was received by the respondent No.3 College on 22/1/2005 and thereafter, the respondent NO.3 called upon them to fill the Examination Forms for 3rd year of B.A. Conducted by the respondent University and the petitioners submitted their examination forms to the respondent No.3 College for examination of 3rd year of B.A., on or before 5th February, 2005. It is the case on behalf of the petitioners that the respondent NO.3 college presented the Examination Forms of the petitioners before the authority of the respondent University on 7th February, 2005 and the Examination Forms of the petitioners were accepted by the authorities of the respondent University on 7th February, 2005 with the fees for which the authority also issued receipt. It is also the case of the petitioners that the respondent NO.3 college has also addressed a letter dtd.7/2/2005 to the Vice Chancellor of the respondent University to accept the said

Examination Forms of the petitioners with four others. It is also the case of the petitioners that the respondent University has issued a Circular No.18 on 25th January, 2005 informing all the colleges affiliated to the respondent University that the Examination Forms of the students who had appeared in the examination held and conducted in the month of October / November, 2004 and who had passed or failed, should be accepted by the respective college till 5th February, 2005 and the same shall be submitted to the office of the respondent University on or before 7th February, 2005. It is also the case of the petitioners that they submitted their Examination Forms to the respondent NO.3 College on or before 5th February, 2005, as provided in Circular No.18 and the respondent College had in turn submitted the said Forms to the respondent University on 7th February, 2005 as provided in the said Circular No.18. However, without

making any letter or communication to the respondent No.3 College, the authority of the respondent University on 23rd February, 2005 telephonically informed the respondent No.3 college that the petitioners will be permitted to appear in the examination scheduled to be held in the month of March, 2005 for the academic year 2004-2005, only if each of the petitioners – students pay Rs.1500.00 as penalty for late filing of the Examination Forms. It is also the case of the petitioners that because the respondent University has, after examination Forms of the petitioners were accepted on 7th February, 2005, issued Circular No.23 dtd.14th February, 2004 providing that the examination forms will be accepted between 22nd February, 2005 and 24th February, 2005 with penalty of Rs.1500.00 per student, of those students who have not submitted their examination forms before the that date. It is, therefore, submitted by them that the

provisions made for payment of Rs.1500 per student as penalty for acceptance of the examination forms was applicable to those students who have not filled in examination forms and submitted to the college authority on or before 5th February, 2005 and whose forms have not been submitted by the college to the University or or before 7th February, 2005 and according to them the Circular No.23 dtd.24th February, 2005 is perspective in nature and it is not applicable with retrospective effect. It is submitted that as the University insisted for penalty of Rs.1500.00 per student as per the Circular No.23 dtd.14th February, 2005, they will not be permitted to appear in the examination of 3rd year of B.A., to be conducted in the month of March/April, 2005 and therefore, they have preferred the present petition praying the aforesaid reliefs.

4.On the other hand, It is the case of the

respondent University that there were two types of students i.e. Regular as well as repeater, who were to appear in the examination of 3rd Year B.A., to be held and conducted by the respondent University in the month of March/April, 2005 and they were required to submit their examination forms through the college on or before 31st December, 2004 as stated in the Circular No.144 dtd.22nd November, 2004 to the University. It is also the case of the respondent University that thereafter vide Circular No.147 dtd.3rd December, 2004, the last date for submitting the examination forms was extended to 5th January, 2005 and in the said Circular, it was further stated that the students who could not submit their forms on or before 5th January, 2005, can submit their examination forms till 19th January, 2005 with a payment of Rs.10.00 for late fees. However, the late fees of Rs.100.00 was required to be paid if the forms were submitted after 19th January,

2005, but before 27th January, 2005.

5.It is further the case of the respondent University that as per Circular NO.18 dtd.25th January, 2005, Repeaters, viz., the students who had appeared in the examination of 3rd year of B.A., held and conducted in October/November, 2004 and had failed, could have filled in their examination form for the examination of 3rd Year B.A., held and conducted in March/April, 2005 till 7th February, 2005 and the said date for accepting the examination forms was thereafter extended to 15the February, 2004 vide another Circular No.22 dtd.9th February, 2005 by the respondent University.

6.It is also the case of the respondent University that the aforesaid Circulars were applicable to those students who had appeared in the examination of 3rd Year B.A., held and

conducted in October/November, 2004 and is not applicable to the present petitioners as they would be regular students for the examination of 3rd year B.A., and therefore, at the most they could have submit their forms till 27th January, 2005 with a late fee of Rs.100.00.

7.It is also the case of the respondent University that due to several requests and representations received from various colleges as well as students, the respondent University issued Circular No.23 dtd.14th February, 2005, whereby all the students i.e. Regular as well as repeaters, were allowed to submit their examination forms between 20th February, 2005 and 24th February, 2005 with a penalty of Rs.1500.00. That as per the procedure, the Examination Forms were to be submitted by the students before the respective colleges and the respective colleges in turn would submit the same before the University and in the instant

case, the forms of the petitioners were submitted by the respondent college on 7th February, 2005 along with covering letter and the fees for examination of 3rd year B.A. It is also the case of the respondent NO.1 University that as per Circular No.18, last date for submitting forms of repeaters was 7th February, 2005. However, at the time of receiving the forms for examination, it was not possible to scrutinize each and every form. It is also further submitted that in order to deal with the examination forms efficiently, the University had separate counters for receiving and scrutinizing the forms and after receiving the forms the same are sent from receiving counter to the scrutinizing counter which generally takes 8 to 10 days as the same are processed in college-wise bunches. It is further submitted that in the present case, the forms of the petitioners were submitted by the respondent NO.3 college on 7th February, 2005

and though the respondent College was supposed to submit the forms of the repeaters only, the forms submitted by the college included the forms of the regular students also i.e., the petitioners and no classification of the forms was mentioned in the covering letter by the respondent college and hence only on scrutinizing of the forms, the respondent University came to know that the bunch of the forms submitted by the respondent college had only four forms of the repeaters and the remaining 54 forms were of regular students whose last date for submitting the form was 27th January, 2005 and therefore, the University informed the respondent No.3 college about the same on 23rd February, 2005 It is also the case of the respondent University that in view of the Circular No.23 dtd.14th February, 2005, the University intimated the respondent No.3 College that since 54 forms submitted by it were of regular students, the same would be

accepted by the respondent University on payment of Rs.1500.00 as penalty as mentioned in Circular No.23 dtd.14th February, 2005.

8.So far as the contention of the petitioner with regard to the retrospective effect of Circular No.23 dtd.14th February, 2005 is concerned, it is submitted on behalf of the respondent No.1 University that it does not operate retrospectively as alleged inasmuch as the forms were accepted by the University on 7th February, 2005 under the assumption that the said forms were of repeaters in view of the fact that no bifurcation of the regular as well as repeaters was given / mentioned by the respondent College in the covering letter and under these circumstances, the respondent University had accepted fee of Rs.120.00 per student. It is further submitted that in fact the last date for submitting the Examination Forms of the regular students was 5th January,

2005 and only upon the late payment of Rs.100.00, the University could accept the forms till 27th January, 2005 and the said last date was extended to 7th February, 2005 only for the students who were repeaters and the petitioners were not repeaters but were regular students. It is further submitted that in ordinary curse, those forms were liable to be rejected. However, i a greater interest of the students and taking a lenient and sympathetic view, the respondent University extended the benefit of Circular No.23 to the petitioners – regular students with a view to see that the benefits of the students i.e., petitioners is not adversely affected and the respondent No.1 University had informed the respondent College that the forms of the regular students i.e., the petitioners would be accepted by upon the payment of Rs.1500.00 per student as penalty.

9.So far as the challenge to the legality and

validity of the Circular NO.23 dtd.14th February, 2005 is concerned, it is submitted that the same is neither illegal nor unjust. It is submitted that the University is well within its power to issue Circular No.23 dtd.14th February, 2005 under the provisions of the Gujarat University Act, 1949 and the said Circular was issued in the interest of the students to enable them to appear in the Examination to be held and conducted in March/April, 2005. Therefore, it is requested to dismiss the present petition.

10.Considering the fact that the forms of the petitioners were with the University which were submitted on 7th February, 2005 and the dispute was with regard to the payment of late fee of Rs.1500.00 and considering the fact that the examination of 3rd year of B.A. was to commence from 14th March, 2005, this Court vide order dtd.9th March, 2005 directed the respondent

Nos.1 and 2 to allow the petitioners to appear in the 3rd Year Examination of B.A., which was scheduled to be commenced from 14th March, 2005, subject to ultimate outcome of the present petition and keeping the question with regard to payment of late fee of Rs.1500.00 per student, to be considered at the final hearing stage and accordingly all the petitioners were permitted to appear in the examination of 3rd Year B.A. However, pursuant to the aforesaid interim order passed by this Court, their results are not declared. The question which is required to be considered in the present petition is whether the petitioners are required to pay an amount of Rs.150000 towards late fee and/or penalty or not.

11.As stated hereinabove, it is the contention on behalf of the petitioners that they had submitted the Examination Forms for appearing in the examination of 3rd Year B.A. with the

respondent NO.3 college on or before 7th February, 2005 and the respondent No.3 College submitted their forms to the respondent University on the same day i.e. 7th February, 2005 and the University accepted the said form on the same day and issued receipt to that effect and therefore, the case of the petitioners would be covered by Circular No.18 dtd.25th January, 2005 and their case would not be covered by Circular No.23 dt.14th February, 2005 and therefore, they are not required to pay Rs.1500.00 as penalty being late fee. On the other hand, it is the case on behalf of the respondent University that so far as the petitioners are concerned, they are regular students as they were to appear in the examination of 3rd year of B.A., for the first time and they were required to submit their forms on or before 27th January, 2005 with a late fee of Rs.100.00. It is the case on behalf of the respondent University that the Circular

No.18 dtd.25th January, 2005 was applicable and covering the case of the repeaters students who had appeared in the examination of 3rd year of B.A. held and conducted in October/November, 2004 and had failed and they were required to fill in the Examination Forms on or before 7th February, 2005. It is the case on behalf of the respondent University that the last date for accepting the Forms of repeaters was extended to 15th February, 2005 for which another Circular being Circular No.22 was issued. However, considering several requests and representations, the respondent University thereafter extended the time limit up to 24th February, 2005, whereby all the students, regular as well as repeaters were allowed to submit their Forms between 22nd February, 2005 and 24th February, 2005 by depositing Rs.1500.00 per form per student as penalty. It is not in dispute that the petitioners have failed in one or two subjects in the examination of 2nd year

of B.A. and were permitted to allow to keep term (A.T.K.T.) and were appearing for the first time in the examination of 3rd year of B.A. to be held and conducted March/April, 2005. Therefore, the petitioners are considered to be regular students so far as the Examination of 3rd year of B.A. is concerned. Those students who had failed in the examination of 3rd year of B.A. conducted in October/November, 2004 were again required to appear in the examination of 3rd Year of B.A. held in March/April, 2005. Thus, they are considered to be repeaters so far as the examination of 3rd year of B.A. is concerned. So far as the regular students who were to appear in the examination of 3rd year of B.A. conducted by the respondent No.1 University in the month of March/April, 2005, were required o submit their examination forms through their college initially on or before 31st December, 2004, as stated in the Circular No.144 dtd.22nd

January, 2004 and thereafter, the said last date was extended upto 5th January, 2005 vide Circular No.147 dtd.3rd December, 2004 which was subsequently further extended upto 27th January, 2005. on payment of late fee of Rs.100.00 per students. It appears from the record that vide Circular No.18 dtd.25th January, 2005, the repeaters i.e., the students who had appeared in the Examination of 3rd year of B.A. held in the month of October/November, 2005 and had failed, for them the last date for submitting the forms was extended upto 7th February, 2005 and the same was subsequently further extended to 15th February, 2005 vide Circular No.22 std. 9th February, 2005. So far as the regular as well as repeaters students are concerned it was decided to accept the forms if their forms submitted between 22nd February, 2005 and 24th February, 2005 subject to payment of Rs.1500.00 per student as penalty.

12.Thus, so far as the petitioners who were regular students are concerned, initially the last date for submitting the Forms came to be expired on 27th January, 2005 (on payment of late fee of Rs.100.00) and so far as the repeater students were concerned, the last date for submitting the Forms was extended to 15th February, 2005.

13.The contention on behalf of the petitioners is that as they had submitted their Forms with the respondent College on or before 5th February, 2005 and the respondent No.3 College in turn submitted the Forms with the respondent University on 7th February, 2005 and the respondent University accepted the said Forms on the same day and therefore, the Circular No.23 dtd.14th February, 2005 will not be applicable to them and therefore, they are not required to pay Rs.1500.00 as penalty per student. The respondent University has

explained the aforesaid position with regard to accepting the forms of the petitioners on 7th February, 2005, by submitting that in fact the forms of the petitioners were not required to be accepted by the respondent University and would not have been accepted, but in view of the fact that the respondent No.3 College submitted the Forms of both, regular as well as repeaters (four in number) on 7th February, 2005 and there was no classification / specification made in the covering letter regarding the forms of the regular as well as repeater students. And the scrutinisation of the Forms took 8 to 10 days and at the time of scrutinisation, the University came to know that the respondent No.3 College has submitted the forms of regular students also for whom the last date had already expired on 27th January, 2005. However, considering the subsequent Circular No.23 dtd.14th February, 2005 whereby all the students, regular as well as repeaters, the

last date for accepting the forms was extended and they were allowed to submit their forms between 20thFebruary, 2005 and 24th February, 2005 by paying an amount of Rs.1500.00 as penalty per student as penalty. The respondent NO.3 was informed with regard to the payment of Rs.1500.00 per student as penalty. Therefore, merely because the respondent University accepted the Forms on 7th February, 2005 in the larger interest of the students, the insistence on the part of the University to pay Rs.1500.00 per student as penalty cannot be said to be illegal and/or arbitrary. There is satisfactory justification given by the University for accepting the Forms on 7th February, 2005. If the respondent No.3 college had clarified the situation in the covering letter and submitted bifurcation of the students, regular as well as, repeaters then the University certainly would not have accepted the Forms of the petitioners on 7th February, 2005. The

petitioners, therefore, cannot take disadvantage of the situation and the action of the University of accepting the Forms in the interest of the students and the action of the respondent NO.3 of not submitting the necessary particulars of the students by the respondent NO.3 college. The petitioners are governed and covered by Circular NO.23 dtd.14th February, 2005 and therefore, if the petitioners want to get their result of the examination of 3rd Year of B.A. held and conducted in the month of March/April, 2005, they are required to and duty bound to pay an amount of Rs.1500.00 per student as penalty.

14.So far as the contention on behalf of the petitioners with regard to applicability of Circular No.23 dtd.14th February, 2005 retrospectively is concerned, the same has no substance. Considering the aforesaid explanation given by the University for

accepting the Forms on 7th February, 2005 mistakenly and/or by not giving correct particulars by the respondent NO.3 college, it cannot be said that Circular No.23 dtd.14th February, 2005 is made applicable retrospectively,a s the forms came to be accepted on 7th February, 2005. In fact, the forms of the petitioners were not required to be accepted on 7th February, 2005, as the last date for accepting the forms so far as the petitioners are concerned was 27th January, 2005. If the petitioners wanted to appear in the examination of 3rd Year of B.A. conducted in March/April, 2005 by submitting their forms after 27th January, 2005 then their case would be governed by Circular No.23 dtd.14thFebruary, 2005 and therefore, contention behalf of the petitioners with regard to retrospective effect of Circular No.23 dtd.14th February, 2005 has no substance.

15.So far as the challenge to the Circular No.23 dtd.14th February, 2005 by the petitioners is concerned, the same has also no substance,a s the University has got powers to extend time limit for submitting the forms and to issue Circular subject to certain conditions. In fact the last date for submitting the Forms initially was 31st December, 2004, which was subsequently extended to 5th January, 2005 and the same was further thereafter further extended to 19th January, 2005 with a late fee of Rs.10.00. The said last date was further extended to 27th January, 2005 with a late fee of Rs.100.00. Only due to several requests and representations received from various colleges and students, the University issued Circular No.23 dtd.14th February, 2005, whereby all the students, regular as well as repeaters, were allowed to submit their Forms between 22nd February, 2005 and 24th February, 2005 with penalty of Rs.1500.00 per student as late fee.

The University was not under obligation to extend the time limit, however, considering the larger interest of the students, the University extended the time limit for accepting the forms with a penalty of Rs.1500.00 towards late fee. Under the aforesaid circumstances,it cannot be said that the Circular No.23 dtd.14th February, 2005 is in any way illegal and/or the same is required to be quashed and set aside.

16.For the reasons recorded hereinabove, there is no substance in the present petition. The insistence on the part of the respondent No.1 University to pay an amount of Rs.1500.00 per student as penalty cannot be said to be in any way illegal and/or arbitrary. Under the circumstances, the present petition is required to be dismissed.

17.It will be open for the petitioners to pay an amount of Rs.1500.00 (Rupees Fifteen Hundred

only) per student as penalty, if they are desirous to get their result of the examination of 3rd Year of B.A./B.Com. held and conducted in the month of March/April, 2005, declared. The respondent University is directed to declare the result of the student / petitioner who pays an amount of Rs.1500.00 as penalty to the respondent University.

18.With the aforesaid observations and directions the present petition is dismissed. Rule is discharged with no order as to costs.

(M.R. SHAH,J.)

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